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In the Supreme Court of the United States

OCTOBER TERM 1964

No. 225

CARLOS CASTRO *et al.*,
PETITIONERS,

v.

CENTRAL AGUIRRE SUGAR COMPANY,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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Opinion Below

The United States District Court for the District of Puerto Rico entered a memorandum opinion, 208 F.Supp. 703, on September 12, 1962. Judgment was entered on June 21, 1963. The judgment of the United States Court of Appeals for the First Circuit was entered on April 8, 1964 and is reported in 330 F.2d 68.

Question Presented

Whether petitioners, working at a hotel-restaurant and a hospital owned by but operated independently of respondent's sugar processing operations are engaged in commerce or in the production of goods for commerce within the meaning of Section 3(J) of the Fair Labor Standards Act. 29 U.S.C.A. 203 (J).

Statements of Facts

The facts of this case were submitted on a stipulation of facts which included the facts set out in affidavits and answers to interrogatories, and are as follows:

Respondent, Central Aguirre Sugar Co., is engaged in the sugar manufacturing industry at Aguirre, Municipality of Salinas, Puerto Rico. It processes sugar cane into raw sugar for commerce at its sugar mill in Aguirre, Puerto Rico, and owns and operates, as separate and independent establishments, a hospital and a hotel-restaurant. R.A. 22. At all relevant times, petitioners have worked solely in the operation and maintenance of the hospital and hotel-restaurant, R.A. 23-24, there being no interchange of employees between the operation of the hospital and or hotel-restaurant and the operation of the sugar mill. R.A. 12.

The hospital and hotel-restaurant are operated all the year round, R.A. 24, whereas the sugar mill operation is seasonal, that is, during the grinding season of sugar cane in Puerto Rico.

The hotel-restaurant started operations on or about the year 1931. It provides food and lodging facilities to some of respondent's executive, professional and other highly technical personnel, such as engineers, agronomists, accountants, chemists and superintendents, as well as to

similar personnel of respondent's associated companies. R.A. 12-13, 23. Business visitors and invitees also use the food and lodging facilities of the hotel-restaurant. Approximately 10 per cent of the hotel-restaurant's customers are members of the general public. Hotel and restaurant facilities are not available to non-supervisory, production and maintenance employees of the respondent and of its affiliated companies. R.A. 23.

There are ample hotel facilities in the area other than respondent's hotel. There are two hotels at Guayama, a distance of approximately 16 miles from respondent's plant, and in addition, there is a number of boarding houses at Salinas, a distance of approximately eight miles from respondent's plant. R.A. 12. Restaurant facilities are available in Aguirre, Salinas, Guayama, Santa Isabel and Ponce, Puerto Rico. R.A. 25.

The hospital started operations on or about the year 1931. It is a semi-public institution serving Aguirre and adjacent communities. The general purpose of the operation of the hospital is to serve the everyday needs of the community and its facilities are available to respondent's employees, their families and the general public. R.A. 18. The sugar mill's employees and their families receive the aforementioned services by the hospital under a welfare plan provision in the collective bargaining agreement signed in 1958 between Central Aguirre Sugar Co. and the union representing the sugar mill employees. R.A. 23. The services offered by the hospital are used by respondent and related companies' executive, professional and administrative staff, as well as by the general public. R.A. 23.

During the year preceding the filing of the complaint, the hospital services tendered to Aguirre and non-Aguirre employees were as follows:

Central Aguirre Sugar Co. employees	*Non-Aguirre employees*
23.62%	76.38%

R.A. 19

There is a large Municipal Hospital located at Salinas, Puerto Rico, a distance of approximately eight miles from respondent's sugar mill, and modern hospitals at Guayama, a distance of approximately sixteen miles from respondent's sugar mill, and at Arroyo, a distance of eighteen miles. Each of said hospitals offers medical and hospital services and facilities substantially equivalent to those of respondent's hospital. R.A. 11-12, 25.

Reasons for Denying Writ of Certiorari.

1. The decision of the Court of Appeals for the First Circuit is not in conflict with prior decisions of other Circuit Court of Appeals.
2. The decision of the Court of Appeals for the First Circuit is correct and in line with official interpretations of the Administrator of the Wage & Hour Division of the Department of Labor
3. The decision of the Court of Appeals for the First Circuit does not present a substantial question of law warranting the issuance of a writ of certiorari.
4. The Petition for Writ of Certiorari is frivolous.

Argument.

A. *The Decision of the Court of Appeals is the correct expression of the law.*

The petitioners contend that the Court of Appeals failed in making the distinction between employees working in

activities essential and related to production for commerce and activities carried out by an employer independently of his principal productive operations for commerce. The point lacks merit. Precisely, the Court of Appeals proceeded to reverse the District Court on the grounds that said court failed to distinguish between facilities carried out by a producer merely to serve a convenient means of meeting employees' personal needs and activities which are closely related to and directly essential to the production by the respondent of goods for commerce.

In approaching the question of coverage the District Court substituted the well established and settled principle of determining coverage on the basis of the activities of the employees, and instead used as the test the employer's need of the facilities involved (hotel-restaurant and hospital). R.A. 28. In this connection the Court of Appeals properly held at 330 F.2d 70:

> We agree with the defendant that the District Court applied the wrong test in determining the question whether the plaintiffs are covered by the Act. . . . The Act thus requires the plaintiffs to satisfy the Court that they are engaged in a closely related process directly essential to the production of goods for commerce, not merely that their activities supply a substantial need of such production. We do not think that the plaintiffs in this case have shown themselves to be thus engaged within the meaning of the Act.

In reversing the judgment of the District Court, the Court of Appeals correctly applied the principle established and consistently followed by this Court in numerous decisions regarding the determination of coverage. See, among others, *Mitchell v. Lublin, McGaughy & Associates*, 358 U.S. 207 (1959), wherein the Court stated that

> To determine the answer to this question, we focus on the activities of the employees and not on the business of the employer. . . . Supra, page 211.

The Court of Appeals also relied on the legislative history of the 1947 amendments to the Fair Labor Standards Act, and on official interpretations of said Act in connection with activities similar to the ones involved herein. 29 C.F.R. 776.18(d).

Petitioners, in presenting the questions to this Court, have stated that they were engaged in employments not independent of respondent's production of raw sugar for commerce. The facts are otherwise. The record shows that the hotel-restaurant and the hospital are separate establishments operated independently of and unrelated to respondent's sugar processing operations, R.A. 240, 22, and that both establishments were used by the general public as well as by non-Aguirre employees. R.A. 18-20.

B. *Uniformity of Collective Bargaining Decisions*

present case would not support such a conclusion. Respondent's operations are not located in an isolated spot, area or place in Puerto Rico. The hotel-restaurant facilities were not maintained for the production workers in the mill. In fact they were not available for those workers, and in effect could be discontinued without affecting productive operations. The Court of Appeals clearly distinguished the circumstances of the cases relied upon by petitioners from the present case.

C. *Hospital employees not covered by the Act*

Prior to the instant case, only two cases involving hospital employees had reached the Court of Appeals. In both cases, it was held that hospital employees were not performing work closely related or directly essential to the production of goods for commerce under the Fair Labor Standards Act. *Juarez* v. *Kennecott Copper Corp.*, 225 F.2d 100 (10th Cir. 1955); *Hale* v. *Ancilla Domini Sisters*, 267 F.2d 96 (7th Cir. 1959).

In *Juarez*, supra, the defendant-employer, a mining, milling and smelting company, owned and operated a hospital in the vicinity of its copper mine. The plaintiff-employees were employed in various capacities in connection with the operation of the hospital. The hospital was a semi-public institution caring for patients (in addition to defendant's employees), consisting of the general public and members of defendant's employees' families. The operation of the hospital was not an integral part of defendant's business. All other mining companies operated in the same area as the defendant without maintaining hospitals. There were ample hospital facilities in the area to care for defendant's employees and the general public without defendant's hospital. There was no interchange of employees between the operation of the hospital and the operation of the mine.

mill and smelter. The doctors on the staff of the hospital were paid a salary by defendant and also engaged in the independent practice of their profession.

The facts in the present case are remarkably alike to the facts in the *Juarez* case. In the instant case the respondent's hospital is a semi-public institution serving Aguirre and adjacent communities. Its general purpose is to serve the everyday needs of the community. R.A. 18. There are ample hospital facilities in the area other than respondent's hospital facilities, offering medical services and facilities substantially equivalent to these of respondent's hospital. R.A. 11-12, 25. All other sugar manufacturing companies in Puerto Rico with the exception of one other beside respondent, operate without maintaining hospitals. The doctors on the staff of respondent's hospital are also engaged in the independent practice of their profession. R.A. 19.

Commenting upon these facts the Court of Appeals stated: "We think that *Juarez* v. *Kennecott Copper Corporation* is indistinguishable on its facts from the case before us, so far as the defendant's hospital is concerned. See also *Hake* v. *Ancilla Domini Sisters*, 7th Cir. 1959, 267 F.2d 96".

The record in this case does not show that petitioners worked in the production of goods for interstate commerce, nor in occupations directly essential to the production of such goods. The applicability of the Act depends not on whether the employer's business is wholly interstate, as petitioners argue, but rather on the character of the employees' activities. *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564; *Mitchell* v. *Lublin, McGaughy & Associates*, 358 U.S. 207; *Mitchell* v. *Zachry Company*, 362 U.S. 310.

Petitioners have not shown any substantial reason warranting the issuance by this Court of a writ of certiorari.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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